

Remarks

This Amendment and Remarks is being submitted in response to the non-final Office Action dated **August 7, 2007**. Claims 18-28 remain in this application. Applicant has enclosed herein a petition for an extension of time of one month with the appropriate fee of \$60.00.

In the office action the examiner rejected Claims 18-28 asserting 35 U.S.C. §103 in view of Beekman United States Patent Number 2,939,671. Applicant respectfully traverses this rejection.

In the office action the examiner incorrectly asserts that Beekman '671 discloses an applicator comprising a tube 14 with a passage 36 formed of material constructed and arranged to be attached to an outside surface 10.

Contrary to the assertions of the examiner the Beekman '671 reference discloses that a "Holder 14 is mounted for free rotation on the non-magnetic sleeve 28. It is preferred that the magnetic holder 14 be constructed of a single body 30." In Beekman '671 the magnetic holder (14) is taught to mechanically hold a non-metallic applicator tube, where the holder (14) has a passage/or bore (36). Beekman '671 also teaches that inside the passage/bore (36) is disposed the non-magnetic tube 28 (applicator) for free rotation within the magnetic holder (14). The non-magnetic tube (28) (applicator) is a different element from the holder (14).

The holder (14) of Beekman '671 is taught to be magnetic. The tube (28) of Beekman '671 is specifically taught to be non-magnetic (28). The holder (14) of Beekman '671 is not the applicator tube of applicant's invention herein. In applicant's invention herein the applicator tube is magnetic, thereby completely eliminating the necessity for a magnetic or a

mechanical holder, collar, and/or bracket which is used to hold a non-magnetic applicator tube.

The prior art including the Beekman '671 reference has a completely different focus, namely the use of a magnetic/mechanical holder, collar, and/or bracket because the applicator tube of Beekman '671, and the applicator tube of the prior art, is taught as being non-magnetic.

The prior art including the Beekman '671 reference teaches away from the complete elimination of a magnetic/mechanical holder, and fails to teach the use of a specific magnetic applicator tube.

The prior art including the Beekman '671 reference does not suggest, teach, disclose, or motivate a person of ordinary skill in the art to completely eliminate a magnetic/mechanical holder, collar and/or bracket.

Applicant's invention herein is not a combination of familiar elements in view of Beekman '671, and the prior art, because the specific element of a magnetic applicator tube was not known, much less familiar to, a person of ordinary skill in the art.

It was not known at the time of applicant's invention herein to directly attach a magnetic applicator tube to the exterior surface of an aerosol container, thereby completely eliminating the prior art magnetic/mechanical holders, brackets, and/or collars, which were previously used to engage a non-magnetic applicator tube to a container.

No solution to the problem of direct attachment of an applicator tube to an aerosol container was known prior to applicant's invention. The solution to this problem was not to invent a new magnetic/mechanical holder, bracket, and/or collar as identified by the prior art.

Under *KSR INTERNATIONAL CO. v Teleflex. Inc.*, 550 U.S. ____ (2007) 1275.Ct.1727 (April 30, 2007), the patent office is required to specifically identify and make

factual findings as to the reasons why a person of ordinary skill in the art would have obtained the invention in the manner claimed.

The Supreme Court has also mandated that the rationale for an obviousness rejection must be explicit and not recite broad conclusory statements. In addition, under *In Re Lee*, 277 F. 3d. 1338 (Fed. Cir. 2002) the Patent Office is required to make specific factual findings and identify some concrete evidence in the record to support the asserted findings of obviousness, otherwise the assertions of the Patent Office will not support an obviousness rejection. The examiner must show reasons why a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. In *Re Rouffet*, 149 F. 3d. 1350, 1357-58 (Fed. Cir. 1998)

In this case the evidence of record does not explicitly articulate any rationale in the prior art as to why or how a person of ordinary skill would be motivated to completely eliminate a magnetic/mechanical holder, bracket and/or collar of Beekman '671 or the prior art. In this case the evidence of record does not explicitly articulate any rationale as to why or how a person of ordinary skill would be motivated to replace a non-magnetic applicator tube with a magnetic applicator tube. In this case a person of ordinary skill in the art would have attempted to conceive a better mechanical collar, holder, or bracket for use in retaining a non-magnetic application tube to the exterior surface of a container. A person of ordinary skill reviewing the Beekman '671 reference would not have conceived of the complete elimination of the mechanical or magnetic bracket, collar or holder without the hindsight teaching of Applicant's invention herein. Therefore, an obviousness rejection is improper. Applicant respectfully requests that the rejection under 35 U.S.C. §103 be withdrawn.

The shortcomings of the prior art render the obviousness rejection under 35 U.S.C. §103 inappropriate. Applicant respectfully requests the rejection of Claims 18-28 herein be withdrawn and Claims 18-28 be reconsidered and allowed. Early action to that affect is earnestly solicited.

Should the examiner have any questions in this regard the examiner is cordially invited to contact the undersigned by telephone, facsimile, and/or email at the below identified addresses.

Applicant has enclosed herein a petition for a one-month extension of time with the appropriate fee in the amount of \$60.00.

Should the Examiner have any questions concerning this Amendment, then the Examiner is cordially invited to contact the undersigned by telephone, facsimile, and/or E-Mail at the below identified address. If an extension of time is required to make this response timely and no separate petition is enclosed, Applicant hereby petitions for an extension of time sufficient to make the response timely. In the event that the response herein requires the payment of additional government fees and payment is not enclosed, please charge Deposit Account No. 22-0350.

Conclusion

It is believed that claims 18-28 in the present application are in condition for allowance in view of the foregoing. Applicant respectfully requests reconsideration of the claims herein and that the rejections be withdrawn and the claims allowed. Applicant respectfully requests the Examiner to reconsider the claims herein which Applicant believes are in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

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